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SEC

SERVICE DATE – SEPTEMBER 12, 2002

SURFACE TRANSPORTATION BOARD

STB Ex Parte No. 638

PROCEDURES TO EXPEDITE RESOLUTION
OF RAIL RATE CHALLENGES TO BE CONSIDERED
UNDER THE STAND-ALONE COST METHODOLOGY

September 11, 2002

NOTICE TO THE PARTIES:

On September 4, 2002, the Surface Transportation Board served a decision in the above-entitled proceeding. In that decision, the Board asked for comments from interested persons by October 9, 2002. That comment date anticipated the Notice of Proposed Rulemaking (NPR) being published in the Federal Register on September 9, 2002. However, the NPR was not published until September 11, 2002. As a result, the comment period will extend until October 11, 2002, with reply comments due 20 days thereafter.

Publication of the NPR was delayed in order to incorporate changes required by Federal Register editorial guidelines. Those changes required the **APPENDIX** to the Board's decision to be revised. A copy of the revised **APPENDIX** is attached.

Vernon A. Williams
Secretary

Attachment

APPENDIX

For the reasons set forth in the decision, the Surface Transportation Board proposes to amend 49 CFR parts 1109 and 1114 as follows:

PART 1109 — USE OF ALTERNATIVE DISPUTE RESOLUTION IN BOARD PROCEEDINGS AND THOSE IN WHICH THE BOARD IS A PARTY

Add new section 1109.4, *Mandatory Mediation in Rate Cases to be Considered Under the Stand-Alone Cost Methodology*, as follows:

1109.4 *Mandatory Mediation in Rate Cases to be Considered Under the Stand-Alone Cost Methodology.*

- (a) A shipper seeking rate relief from a railroad or railroads in a case involving the stand-alone cost methodology must engage in non-binding mediation of its dispute with the railroad prior to filing a formal complaint under Part 1111.
- (b) The shipper must file a request for mediation with the Board, indicating its intent to file a complaint alleging a violation of 49 U.S.C. 10701 and 10704. This request will engage the Board's processes and serve to fix the relevant limitations period for any relief for rates or charges already paid, just as would the filing of a formal complaint. The request for mediation must specify the relevant facts and nature of the dispute in sufficient detail to frame the issues requiring mediation. The shipper must serve a copy of its request on the defendant railroad as specified in Sec. 1104.12. A mediator will be assigned by the Board within 5 business days of filing of the shipper's request.
- (c) The mediator will work with the parties to try to reach a settlement of all or some of their dispute or to narrow the issues in dispute, and reach stipulations that may be incorporated into any subsequent adjudication before the Board if mediation does not fully resolve the dispute.
- (d) If the parties reach a settlement, the mediator may assist in preparing a settlement agreement. If the parties fail to reach a settlement, the shipper may proceed to file a formal complaint with the Board. If the parties reach a partial settlement, the shipper may proceed to file a formal complaint with the Board on the remaining issues, which will be handled under the Board's existing rules.
- (e) Within 5 business days of the assignment to mediate, the mediator shall contact the parties to discuss ground rules and the time and location of any meeting. The precise procedure used to facilitate the mediation is flexible and is within the mediator's discretion.

(f) The entire mediation process shall be private and confidential, and shall be completed within 60 days of the filing of the shipper's request. If the mediation process cannot be completed in 60 days, a request for an extension may be filed by the mediator, after consultation with the parties, prior to the end of the 60 day period, and may be considered by the Board.

PART 1114 — EVIDENCE; DISCOVERY

1. Amend §1114.21 as follows:

- a. Revise the first sentence of paragraph (a)(1);
- b. Redesignate current paragraphs (b) – (f) as (c) – (g);
- c. Add new paragraph (b).

The revised and added text reads as follows:

§1114.21 Applicability; general provisions.

(a) *When discovery is available.* (1) Parties may obtain discovery under this subpart regarding any matter, not privileged, which is relevant to the subject matter involved in a proceeding other than an informal proceeding or a rate case to be considered under the stand-alone cost methodology. * * *

(b) *Discovery in stand-alone cost rate cases.* In a rate case to be considered under the stand-alone cost methodology, parties may obtain discovery only of information for which the party seeking discovery has a clear, demonstrable need in order to make its case and which is not readily available to it through means other than discovery.

2. Add to §1114.31, new paragraphs (a)(1) - (4) as follows:

§1114.31 Failure to respond to discovery.

(a) * * * * *

(1) *Reply to motion to compel generally.* Except in rate cases to be considered under the stand-alone cost methodology, the time for filing a reply to a motion to compel is governed by §1104.13.

(2) *Reply to motion to compel in stand-alone cost rate cases.* A reply to a motion to compel must be filed with the Board within 10 days thereafter in a rate case to be considered under the stand-alone cost methodology.

(3) *Conference with parties.* Within 5 business days after the filing of a reply to a motion to compel in a rate case to be considered under the stand-alone cost methodology, Board staff may convene an informal conference with the parties to discuss the dispute, attempt to narrow the issues, and gather any further information needed to render a ruling.

(4) *Ruling on motion to compel in stand-alone cost rate cases.* Within 5 business days after a conference with the parties convened pursuant to subparagraph (a)(3) of this section, the Secretary will issue a summary ruling on the motion to compel discovery in a stand-alone cost rate case. If no conference is convened, the Secretary will issue this summary ruling within 10 business days after the filing of the reply to the motion to compel.

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